MONTANA LEGISLATIVE HISTORY

Chapter 307 1971

Bill H _____ S SB 128 Original bill & history ____C

H. Committee on AGRICULTURE & IRR.			S. Committee on IRRIGATION & WATER		
Hearing Date(s)	2/18	____C	Hearing Date(s)	prior to 2/2	____C
	2/23	____C		2/2	____C
	_____	____C		_____	____C
	_____	____C		_____	____C
Date Out	_____	____C			

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

SENATE BILL NO. 128

INTRODUCED BY Mc Dowan Bugg

89-2911, 89-2913

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR THE FILING OF CERTAIN FORMS WITH THE MONTANA WATER RESOURCES BOARD RELATIVE TO GROUND WATER APPROPRIATION; AMENDING SECTIONS 89-2911 AND 89-2913, R.C.M., 1947."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

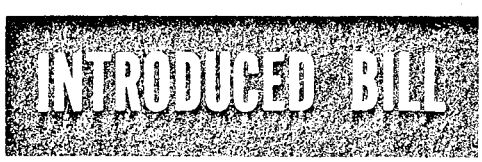
Section 1. Section 89-2911, R.C.M., 1947, is amended to read as follows:

"Section 89-2911, DEFINITIONS. As used in this act or regulations issued hereunder:

(a) "Ground water" means any fresh water under the surface of the land including the water under the bed of any stream, lake reservoir, or other body of surface water. Fresh water shall be deemed to be water fit for domestic, livestock or agricultural use. The administrator, after notice and hearing, is authorized to fix definite standards for determining fresh water in any controlled ground water or subarea of the state.

(b) "Aquifer" means any underground geological structure or formation which is capable of yielding water or is capable of recharge.

(c) "Well" means any artificial opening or excavation in the ground, however made, by which ground water can be obtained or through which it flows under natural pressures



or is artificially withdrawn.

(d) "Beneficial use" means any economically or socially justifiable withdrawal or utilization of water.

(e) "Person" means any natural person, association, partnership, corporation, municipality, irrigation district, the state of Montana or any political subdivision or agency thereof, and the United States or agency thereof.

(f) "Administrator" means the Montana Water Resources Board.

(g) "Ground water area" means an area which, as nearly as known facts permit, may be designated so as to enclose a single and distinct body of ground water, which shall be described horizontally by surface description in all cases and which may be limited vertically by describing known geological formations should conditions dictate this to be desirable. For purposes of administration, large ground water areas may be divided into convenient administrative units "known as subareas."

(h) "Notice of Appropriation" means an optional form on which the appropriator notifies the administrator and files for record the intention to appropriate ground water. This form filed alone does not give the appropriator the right to use ground water. It must be followed by a notice of completion to establish a right.

(i) "Notice of Completion" means a form on which the appropriator notifies the administrator and files for record the completion of a well (Notice of Completion of Ground Water Appropriation by Means of Well) or the completion of a development to withdraw ground water without a well as by subirrigation and other natural processes (Notice of Completion

of Ground Water Appropriation Without a Well).

(j) "Declaration of Vested Ground Water Rights" means a form which was provided, for a period of four (4) years after January 1, 1962, for filing vested ground water rights. This form expired on January 1, 1966."

Section 2. Section 89-2913, R.C.M., 1947, is amended to read as follows:

"Section 89-2913. FILING -- NOTICE OF APPROPRIATION -- NOTICE OF COMPLETION.

(a) The administrator shall prepare and publish forms for the filing by appropriators with the county clerks. They shall be known as a "notice of appropriation" and a "notice of completion," respectively. The notice of appropriation shall require, and provide space for, answers to such questions as: (1) the name and address of the appropriator; (2) the beneficial use for which the appropriation is made, including a description of the lands to be benefited if for irrigation; (3) the rate of use in gallons per minute of ground water claimed; (4) the annual period (inclusive dates) of intended use; (5) the probable or intended date of first beneficial use; (6) the probable or intended date of commencement and completion of the well or wells; (7) the location, type, size and depth of the well or wells contemplated; (8) the probable or estimated depth of the water table or artesian aquifer; (9) the name, address, and license number (if any) of the driller engaged; and (10) such other similar information as may be useful in carrying out the policy of this act.

The notice of completion shall require answers to the same sort of questions as required for the notice of

appropriation, except that for the most part it shall inquire as to accomplished facts concerning the well or means of withdrawal, including information as to the static level of water in the casing or the shut-in pressure if the well flows naturally; the capacity of the well in gallons per minute by pumping or by natural flow; the approximate drawdown or pumping level of the well; the approximate surface elevation at the well head; the casing record of the well; the drilling log showing the character and thickness of all formations penetrated; the depth to which the well is drilled; and similar information.

For the benefit of persons obtaining (or desiring to obtain) ground water without a well (as by subirrigation and other natural processes) a specially prepared "notice of completion" shall be provided, enabling such persons to describe the means of using ground water and to estimate the amount of water so used, and requiring such other similar information as shall be pertinent to this particular class of user. The administrator shall distribute said forms to the county clerks.

(b) On and after January 1, 1962, any person desiring to appropriate ground water may complete a notice of appropriation and file it with the county clerk of the county in which the appropriation is located.

(c) Upon the filing of a notice of appropriation, the county clerk shall transmit a copy thereof to the administrator, and to the Montana bureau of mines and geology, retaining the original on file locally.

(d) After filing a notice of appropriation, in order to acquire a right based thereon, the person must, within ninety (90) days, commence actual excavation and diligently prosecute

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construction of a well and, upon its completion, file a notice of completion with the county clerk of the county in which the appropriation is located. The county clerk shall handle and transmit such filed notices as in the case of a filed notice of appropriation.

(e) A failure to file a notice of appropriation deprives the appropriator of his right to relate his date of appropriation back, and results in the dating of his appropriation as of when he files a notice of completion. Until a notice of completion is filed with respect to any use of ground water instituted after January 1, 1962, no right to that use of water shall be recognized. However, in the case of uses instituted prior to January 1, 1962 and diligently prosecuted to completion on or after that date, the date of appropriation shall relate back to the date of commencement of construction, upon the filing of a notice of completion.

(f) Persons required to file well logs and other information under the laws governing the conservation of oil and gas and who do so in compliance therewith, shall be deemed to have complied with all of the filing requirements of this act insofar as it applies to such particular oil and gas wells, salt water disposal wells, and injection wells. The date of appropriation in such cases shall be the date that written notice of intention to drill is given to the oil and gas conservation commission of the state of Montana.

(g) It shall be the responsibility of the driller of each well to fill out the notice of completion for the appropriator, and the latter shall be responsible for its filing.

~~(h) Persons who have put ground water to a beneficial use, including subirrigation or other natural process, prior~~

~~to January 1, 1962, shall, within four (4) years after January 1, 1962, file a declaration in the office of the county clerk of the county in which the claimed right is situated. The declaration shall be made on a form known as a "declaration of vested ground water rights" and shall contain the following information: (1) the name and address of the claimant; (2) the beneficial use on which the claim is based; (3) the date or approximate date of the earliest beneficial use, and how continuous the use has been; (4) the amount of ground water claimed; (5) if the beneficial use has been for irrigation, the acreage and description of the lands to which such water has been applied and the name of the owner thereof; (6) the means of withdrawing such water from the ground and the location of each well or other means of withdrawal; (7) the date of commencement and completion of the construction of the well, wells or other works for withdrawal of ground water; (8) the depth of water table; (9) so far as it may be available, the type, size and depth of each well or the general specifications of any other works for the withdrawal of ground water; (10) the estimated amount of ground water withdrawn each year; (11) the log of the formations encountered in the drilling of each well; and (12) such other information of a similar nature as may be useful in carrying out the policy of this act.~~

(h) Persons who had put ground water to a beneficial use, including subirrigation or other natural process, prior to January 1, 1962 had a four (4) year period after January 1, 1962 to file a "declaration of vested ground water rights" in the office of the county clerk of the county in which the claimed right was situated. The right to file a "declaration

of vested ground water rights" expired on January 1, 1966; therefore, any person desiring to file on ground water put to beneficial use prior to January 1, 1962, but not filed on by December 31, 1965 may file a "notice of completion." The appropriators right will commence on the date the notice is filed, except as hereinafter provided.

The county clerk shall transmit copies to the office of the administrator and the bureau of mines and geology. The administrator shall attend to filing copies in any other counties affected by the appropriation.

~~The declaration of vested ground water rights herein provided for shall be taken and receeived in all courts of this state as prima facie evidence of the statements therein contained.~~

The "declaration of vested ground water rights" as provided for, to be filed on from January 1, 1962 to January 1, 1966 shall be taken and received in all courts of this state as prima facie evidence of the statements therein contained.

Failure to comply with this requirement shall in no wise work a forfeiture of such rights, or prevent any such claimant from establishing such rights in the courts, but he must maintain the burden of proving such unrecorded rights. Provided, however, that persons who have filed the water well log form, provided for in Sections 1 and 2 of Chapter 58, Session Laws of Montana, 1957, shall be deemed to have complied with the requirements of this section. These latter forms may be returned to the county clerks by the administrator for the purpose of correction or for the entry of material facts necessary to fully complete the filing.

Section 3. Sections 89-2911 and 89-2913, R.C.M., 1947 are amended.

COMMITTEE ON IRRIGATION AND WATER

BILL NO.	ENTERED COMM.	OUT OF COMM.	DO PASS	DO NOT PASS	DO PASS AS AMENDED	BE CONCURRED IN	BE CONCURRED IN AS AMENDED	BE NOT CONCURRED IN	BE ADOPTED
SJR 4	1 7 71	1 22 71	X						
SR 12	2 11 71	2 23 71							X
SB 19	1 15 71	1 15 71	X						
SB 20	1 15 71	1 15 71	X						
SB 70	1 15 71	1 20 71			X				
SB 100	1 14 71	2 8 71		X					
SB 124	1 15 71	2 8 71			X				
SB 128	1 15 71	2 2 71	X						
SB 186	1 20 71	2 2 71		X					
SB 282	1 21 71	2 8 71	X						
SB 283	1 21 71	2 8 71		X					
SB 303	1 21 71	2 8 71	X						
SB 45	referred to	Fish & Game	Committee						
HB 265	2 13 71						X		
~~HB 368~~	~~2 13 71~~								

Prior to 2/2/1971

The meeting was brought to order by Chairman McGowan at 12:30 p.m. in Room 404. Roll call was taken with seven members present.

SENATE JOINT RESOLUTION #4: was moved by Senator Groff and seconded by Senator Carl, DO PASS, all were in favor.

SENATE BILL #124: Mr. Hans L. Bille representing the Montana Water Resources Board made his views known as to why we need changes in the present service law. Mr. Doug Smith also told us he was in support of the bill. After much discussion S.B. #124 was referred to a subcommittee of Senator Turnage and Senator Groff.

SENATE BILL #128: Mr. Ron Guse then spoke and handed out memorandums. He explained the reasons for the changes in two sections of the bill. A discussion was held and then it was decided to refer S.B. #128 to the subcommittee.

The meeting was adjourned at 1:30 p.m.

Mc Gowan

Chairman

February 2, 1971

Irrigation and Water

The meeting was called to order at 12:00 noon in Room 402 by Chairman McGowan. Roll call was taken with a quorum present.

SENATE BILL #128: James Halloran gave a report on a meeting that was held yesterday, February 1, 1971, concerning SB #128. He stated that the people at the meeting were in favor of the bill, their names are listed in these minutes: William R. Morse, Bert Van Dyken, T. L. Haugan, Don Coffin, Dave Smith, Mons Teigen, Glen Camp, William Osborne, Ernest W. Bond, R. J. Guse, James E. Halloran, Don Breiby.

It was moved by Senator Groff and seconded by Senator Siderius, DO PASS Senate Bill #128. All in favor.

SENATE BILL #186: Senator Stein moved and Senator McOmber seconded it, that Senate Bill #186 DO NOT PASS. None opposed to the motion.

Meeting was adjourned at 12:45 p.m.

McGOWAN Chairman

February 18, 1971

The Committee on Agriculture and Irrigation met at 8:00 a.m. with a quorum present and Chairman Hemstad presiding.

Sen. Boyland, Dist. 15, appeared on S.B. 295 to explain it. He stated a similar bill was introduced last session in the Senate but was killed over in the House. He said H.B. 530 had been introduced in the House this session and is now over in the Senate. It had a roll back provision which required increased taxes to be paid if the land is sold for purposes other than agriculture but provided that as long as the land is used for agriculture, it would be taxed on an agricultural basis. He said the state board of equalization had been taxing on the potential instead of production.

Sen. Hanks, Dist. 15, also one of the co-sponsors of the bill spoke in support of the bill. He stated that Bozeman had this problem and it was probably a problem all overthe state.

Sen. Turnage, Dist. 28, supported the bill and said the state board of equalization had amended the present law by regulation to tax land according to potential value instead of use.

Mr. Winton Weydemeyer, representing the Montana State Grange, supported the bill. He said the Grange was mostly in the western part of the state which had increasing problems along this line as many speculators were coming in and buying land and selling it for homesites and the increase in taxes would force the farmers off the land.

Mr. Wes D'Ewart, representing the Montana Farm Bureau, stated the Bureau had supported H.B. 530 because they were in favor of the roll back provision on the taxes.

Mr. Frank Moze, representing the state board of equalization, spoke in opposition to H.B. 295. His statement is attached as exhibit 1 and becomes a part of the record.

Mr. Howard Lord, chairman of the state board of equalization, opposed the bill. He said the bill, as written, would result in a great loss of taxes in recreational areas and areas around cities. He stated H.B. 530 which had passed the House was an equitable bill and they would support it.

Mr. W. F. Koch, past president of the Montana Assessors Association, stated the association concurred with statements made by Mr. Moze and Mr. Lord.

Rep. Zimmer, Dist. 30, opposed the bill. He said the county commissioners had wanted to appear in opposition to the bill but were unable to come so he was appearing for them. He said passage of this bill would hurt the school districts especially and would really upset their school budgets. He said he agreed with remarks of those in opposition to the bill.

Discussion of S.B. 295 and H.B. 530 followed.

Sen. Rehberg, Dist. 9, stated that S.B. 93 really belonged in the Public Health Committee but asked that the committee give it a do pass and send it to the floor of the House instead of transferring it to the Public Health Committee. In the plans for reorganization he asked that water and waste water operators certification remain under the State Board of Health and this had been passed in previous session four years ago and stated the operators do not object. There were no opponents.

Sen. Rugg, Dist 1, appeared in support of S.B. 128. He said requiring filing of certain forms for ground water appropriation would give notice to the public and to land owners that someone is coming in to drill for industrial use. He reported what had happened in his area where so many wells were being drilled for industrial use and in some cases, the ranchers wells were drained by the new wells drilled.

Mr. Ron Guse, executive director of the Montana Water Resources Board, read the attached statement (exhibit 2) which becomes a part of the minutes. He stated that S.B. 128 was satisfactory in all respects.

Mr. Wes D'Ewart, Montana Farm Bureau, asked if the grandfather clause should not be included in the bill as many had not filed on their shallow wells.

Mr. Guse stated that he would object to including it. He said they have already had four years to file on their wells. Mr. Guse answered some questions from the committee members as to time of filing.

Sen. Turnage, Dist. 28, appeared for Sen. McGowan on S.B. 124 and asked Mr. Guse to explain the bill. Sen. Turnage stated there were some things in the bill that would need some corrections.

Mr. Guse read a statement on the bill which appears as exhibit 3 and becomes a part of the record. Mr. Guse said on page 4, line 3, some corrections should be made.

Mr. Charles Bowman appeared on S.B. 128 and stated the bill is illegal as written and proposed many amendments to the bill. His statement is attached and becomes a part of the record as exhibit 4.

Mr. Fred Johnston, an attorney from Great Falls, and manager of the family ranch, stated he supported the section of the bill which called for a centralized filing of groundwater rights with the Montana Water Resources Board but he would object to the appointment of the director as a referee and pointed out that it was a basic rule that a referee cannot have an interest in the case, and therefore thought the amendments are in order.

Sen. Turnage agreed with Mr. Bowman's amendments to remove the director as a referee. He said that section 8 should be taken from the bill, and that members should go through and clean up the deletions on the referee and on page 5, line 3, the word "to" should be inserted.

Mr. W. J. Harrer, rancher formerly from the Gallatin Valley and now

ranching in the Helena valley, stated he agreed with the filings in the Montana Water Resources Board but he did not think the director should be the referee. He said any time the protection of the court was taken away there would be trouble and he felt the Montana Water Resources Board would be given too much power.

Mr. Gordon Herrin, a farmer and past president of Prickly Pear Irrigation District, stated he opposed the bill. He said there was a need for the right kind of filing system and that the intent is fine. He said there were many mistakes in the records of the Water Resources Board and he felt the county should be the place to file the records but the counties should do a better job of sending the records to the state board. He stated the bill should be killed as it is.

Mr. Wes D'Ewart, Montana Farm Bureau, stated the bill had been written for the benefit of the Montana Waters Resources Board and not for the water users. He stated they objected to having the authority taken from the local courts and having it brought into Helena. He said a crop could be ruined before the case could be settled and he spoke very highly of the promptness and fairness of the courts at present in handling the water disputes and felt it should remain the way it is. He said the local judges understood the problems and had been very fair.

Mr. Bowman suggested that an interim committee be appointed and come up with a good ground water bill.

Sen. Turnage agreed that the power should remain in the local courts. There being no further questions, hearing on S.B. 124 was ended.

Rep. Weeding, Dist. 6, appeared on H.R. 11 which requested an interim committee to study underground waters. He said Sen. Groff had introduced a similar resolution in the Senate. He said he was primarily concerned with the underground water in the coal areas. He said the potential for contamination was great in that area. He said some of the water was under the authority of the oil and gas commission, some under the water resources board but he felt it was about time they got some comprehensive ground water laws. He said people realized there was a problem but didn't have the research work doneand the bureau of mines was currently doing some investigation on underground waters. He urged consideration by the committee be favorable.

Rep. East, Dist. 6, supported the resolution and stated that underground water is absolutely essential to us. He said the bureau of mines should have had some legislation prepared for legislature but evidently they were unable to do and needed more time to make the study and draw up legislation.

Mr. Guse stated that he had helped Senator Groff draw up the same resolution to be introduced in the Senate and he hoped that something would come from the resolution for the next session. The underground bill which had been introduced this session had been killed in the Senate. He urged support of the resolution.

Mr. Winton Weydemeyer, representing the Montana Conservation Council, stated he would support the selection of a committee to study the present laws and find out where the problems are and their application of the

laws on the books now. The witnesses were excused as there were no questions from the members.

Rep. Smith moved that H.R. 11 be adopted, seconded by Rep. Staigmiller and the motion carried.

Rep. Murphy stated that he had attended some of the water meetings and talking to farmers with irrigation and most of the farmers were very happy with the way the judges can handle things so quickly. He moved that S.B. 124 do not be concurred in, seconded by Rep. Snortland and the motion carried.

Rep. Murphy explained a few details of S.B. 128 and moved that it be concurred in, seconded by Rep. Kolstad and the motion carried.

Rep. Snortland moved that S.B. 93 be concurred in, seconded by Rep. Staigmiller and the motion passed.

Action on S.B. 295 was postponed until the Senate acted on H.B. 530.

The meeting was adjourned at 9:30 a.m.

Respectfully submitted,

Nels Hemstad

hmw

Nels Hemstad, Chairman

Ex. 2
2-18-71
SB. 128
Gov C.

January 22, 1971

MEMORANDUM

TO: ~~Senate~~ House Agricultural Irrigation ~~Irrigation~~ and ~~Water~~ Committee

RE: Senate Bill No. 128 - "An Act to provide for the filing of certain forms with the Montana Water Resources Board relative to groundwater appropriation; amending Sections 89-2911 and 89-2913, R.C.M., 1947."

The following is a section by section summary of the bill and the reasons for the additions and amendments to the present Groundwater Code:

I. Section 89-2911 - Three definitions are proposed to be added to the present Groundwater Code, and they are: Page 2, line 19, (h) Notice of Appropriation; page 2, line 25, (i) Notice of Completion; and page 3, line 2, (j) Declaration of Vested Groundwater Rights.

The first two definitions (h) and (i) are for the only three (3) existing valid groundwater appropriation forms. The third definition (j) is for a form which expired on January 1, 1966 and is no longer valid.

A. Reasons for proposing the addition of the three (3) definitions:

1. The daily problem of having appropriators filing on the incorrect form has led to defining those appropriation forms as one means of educating the appropriator.

2. Makes for a better understanding of present filing forms.

3. Makes it easier and faster to file appropriation forms.

4. Eliminates misuse of forms.

5. Aids in protecting groundwater right, simply by filing the correct form.

II. Section 89-2913 - Pages 6 and 7 (h). This section would be amended so appropriators could file their groundwater

rights which were not filed on by using the "Declaration of Vested Groundwater Rights" form (now invalid), which was valid between January 1, 1962 and January 1, 1966. Groundwater rights (vested groundwater rights) which were not filed on during that four (4) year period (January 1, 1962 - January 1, 1966) can be filed on the remaining appropriation forms previously mentioned above as definitions (h) and (i) to be added.

A. Reasons for the proposed amendments:

1. The main reason for the amendment is that this section which provided for the "Declaration of Vested Groundwater Rights" form is invalid and is no longer needed. Appropriators are still filing on the form although they have been recalled.

2. It would enable persons to file vested groundwater rights, which were not filed on between 1962 and 1966, although their right would begin as of the date filed unless they could prove otherwise.

3. It would help eliminate the improper use of the expired and invalid "Declaration of Vested Groundwater Rights" form.

4. Would help protect unfiled groundwater rights by enabling them to be filed upon.

Ex. 9
SB 128
HR 11
Montana Water
Resources Board
Bureau
2-18-71

February 2, 1971

The Honorable Gordon McGowan
Montana State Senator
State Capitol Building
Helena, Montana

Dear Senator McGowan:

This letter will reflect the result of a long and fruitful meeting held on the afternoon of February 1, 1971 between representatives of the Montana Water Well Drillers Association, Montana Stockgrowers Association, Montana Woolgrowers Association, Montana Bureau of Mines and the U. S. Geological Survey. As a result of this meeting we have all concluded that a great deal of intensive work and study should be performed in the future in order to preserve both the quality and quantity of Montana underground water. To this end we have made the following informal resolutions:

1. SB 128 is satisfactory in all respects.

2. HB 479 needs to be changed so as to clarify any possible confusion over exceptions relating to oil and gas exploration; this bill should be clarified to show that only the actual drilling operation for an oil or gas well, whether successful or otherwise, should be deemed excepted from the bill.

3. SB 196 should be killed so as to permit an intensive study of the entire field of groundwater quality and quantity. In this regard it is proposed that representatives be elected from each of the groups who may be interested so as to form a legislative study committee. It is also proposed that any final authoritative board or committee be constituted of members elected from such interested associations or groups.

   It is proposed that such committee prepare and draft legislation in the suggested fields and have their study completed well in advance of the next legislature, including the consideration of a permit system for withdrawal of groundwater.

4. Representatives at this meeting are in accord that the well drillers should have the obligation of furnishing "Notice of Completion of Groundwater Appropriation by Means of Well" to the Montana Water Resources Board; in this regard they hope that present pending legislation may be amended to include same; in the event that immediate legislation is unavailable the Montana Water Well Drillers Association will voluntarily furnish such records to the Montana Water Resources Board.

Sincerely,

MONTANA WATER RESOURCES BOARD

Douglas G. Smith
Director

DGS/

S.B. 124
Ex. 3
January 27, 1971
Grace
2-18-71

MEMORANDUM

TO: House Agricultural Irrigation
~~Senate~~ ~~Irrigation~~ and ~~Water~~ Committee

FROM: Montana Water Resources Board

RE: Senate Bill No. 124 - "An Act to provide for centralized filing of all Notices of Appropriation with the Montana Water Resources Board and providing a copy for the respective county clerks; providing for the automatic appointment of the Director of the Montana Water Resources Board as referee in any adjudication suit; providing public notice of the referees' hearing and providing for appeal; providing a new procedure for final adjudication of water rights; amending sections 89-810, 89-848, 89-849, 89-851, 89-852, 89-853, 89-854, and 89-855; and repealing section 89-850, R.C.M., 1947."

The following are reasons in support of this bill:

I. Why a centralized filing system.

1. Under present laws surface water appropriations are filed by the appropriator with the county clerk and recorder in the county in which the use is made. The filed appropriation in the courthouse is filed by date, book and page. If a person were to ask the county clerk and recorder for records of water rights that a particular person had in a certain location and the name or appropriator of the water right was also given it would be nearly impossible for the clerk and recorder to find the specific water right, without searching through stacks of filings. In most cases it would be found only if the person knew the date the appropriation was filed, or the book and page number.

On the other hand surface water appropriations can be found in a matter of minutes in the Montana Water Resources Board offices if the filing was made and we were sent a copy by the county clerk and recorders. The M.W.R.B. can find filed appropriations very readily because they are filed by county; section, township and range; and by ownership or appropriator. Numerous inquiries are answered daily and the method is very effective.

Each and every courthouse has a different method of filing, therefore, 56 different filing systems.

2. Our present surface water laws also require that the county clerk and recorders send the Montana Water Resources

Board copies of any surface water appropriations or instruments transferring water.

> (89-813). Record of declaration . . . . "From and after July 1, 1967, the county clerk and recorder shall forward to the water resources board a copy of any instrument of water appropriation or instrument transferring any water appropriation which is filed as provided in this section.")

A study of the number of appropriations sent to the M.W.R.B. from the county clerk and recorders reveals that only 25-30 percent actually comply with the section quoted above. Many of the county clerk and recorders have mistaken this section of the surface water law for the present Groundwater Code, which also requires copies of appropriations sent into the Montana Water Resources Board.

3. When it becomes necessary to adjudicate a stream, the district court has difficulty in obtaining the following information: water rights and their use; persons to be included in the court action; and a complete survey of the stream by qualified personnel to be used as findings of fact in the court adjudication proceedings.

With a centralized filing system the M.W.R.B. could have this information available within a short period of time, complete and acceptable to the court for a final adjudication. The M.W.R.B. has qualified water right specialists and field survey personnel to study such matters. This Board has had nearly 30 years experience in dealing with surface water rights and making surface water right surveys.

Under the authority of a 1939 law the Board started the first survey in 1942 with Yellowstone County and will complete the state (all 56 counties) by 1972 with Beaverhead County.

Considerable time is spent in each county courthouse recording surface water rights before a survey is made. Again a centralized filing system with the M.W.R.B. would save time and money for the state.

4. Montana's surface water use (surface water filings) will be basic information in our water development under the State Water Plan, which the M.W.R.B. is preparing. Centralized filing would greatly aid in establishing some computerized system of our water use, and available water supplies on our streams is imperative to implement the State Water Plan. If you do not know the amounts of water used and amounts not being

used, a State Water Plan is of little use.

The M.W.R.B.'s present surface water right inventory and listing of surface water filings on streams in Montana is not current and up-dated due to the reasons previously stated. Anyone desiring all the water right information on a stream of any size under our present system requires several days. This same water right information, under a computerized system, could be available in a matter of minutes.

5. By requiring filings to be made with the Montana Water Resources Board, we would be assured of having, at all times, a current file of all appropriations made in the state. Not only would this assist the M.W.R.B.'s work in water resources surveys and in water planning, but it would allow any person seeking to investigate surface water rights access to a central filing system.

II. Why the Director of the Montana Water Resources Board automatically appointed referee in each surface water law suit.

1. This would not change the supremacy of the Courts of Law in determining surface water law suits, but rather would provide for an initial foundation of findings of fact for the court upon which the matter could be objectively considered.

This would eliminate many of the suits from going on for months or years, and it would aid the court greatly in its rulings in any case.

III. A "Law of Abandonment" of surface water rights in Montana should be added to this bill.

The "Law of Abandonment" is strongly recommended because:

1. It could require a water user to declare his water rights of use on all streams in Montana.

2. Terms of a "Law of Abandonment" could give each appropriator from 3 to 5 years to declare or inform the M.W.R.B. of valid water rights being used. Failure to make this declaration of surface water right use could mean a forfeiture of all rights not declared after the 3 to 5-year period had expired.

3. This "Law of Abandonment" should be initiated to eliminate thousands of surface water right filings: such as, (1) filings not now in use; and (2) filings made but the water never appropriated or put to use.

(Water appropriated, but not used, should be put to use. If not used, it should be made available to someone who needs or can put it to use.)

4. Unless a "Law of Abandonment" is adopted it will be nearly impossible to efficiently administer surface water rights in Montana; to know the amount of water being used in the state; to protect present water right of Montana water users; to computerize under a data processing system water information; and have this basic water information for development of our water supplies under the time limitation set forth under the State Water Plan.

AMENDMENT TO SENATE BILL 124: An Act to provide the regulations to use; the appropriation of water and abandonment of rights; and clarification of water use.

1. The appropriation must be for some useful or beneficial purpose and when the appropriator or his successor in interest shall abandon or cease to use water for a period of five (5) years, the right shall cease, and, thereupon such water shall revert to the public and may again be appropriated under Title 89-810.

2. Failure to declare to the Montana Water Resources Board all or any appropriation of public water for useful and beneficial purposes after the enactment of this act for any period of five (5) successive years, the right to so use shall be deemed as having been abandoned, and any owner or owners shall thereupon forfeit all water rights, easements and appurtenances thereto and theretofore acquired, and all water so formerly appropriated by such owner or owners and their predecessors in interest may again be appropriated as public water for beneficial use.

Section 89-802 is hereby repealed.

LOG OF APPROPRIATIONS AND TITLE TRANSFERS RECEIVED FROM DECEMBER 1969 to DECEMBER 1970

	COUNTY	NO. RECEIVED
	Beaverhead	1. 8
2.	Big Horn	2. 0
3.	Blaine	3. 0
4.	Broadwater	4. 0
5.	Carbon	5. 4
6.	Carter	6. 8
7.	Cascade	7. 6
8.	Chouteau	8. 21
9.	Custer	9. 2
10.	Daniels	10. 0
11.	Dawson	11. 12
12.	Deer Lodge	12. 0
13.	Fallon	13. 15
14.	Fergus	14. 33
15.	Flathead	15. 28
16.	Gallatin	16. 176
17.	Garfield	17. 13
18.	Glacier	18. 1
19.	Golden Valley	19. 0
20.	Granite	20. 24
21.	Hill	21. 0
22.	Jefferson	22. 15
23.	Judith Basin	23. 0
24.	Lake	24. 14
25.	Lewis and Clark	25. 2
	Liberty	26. 0
27.	Lincoln	27. 11
28.	McCone	28. 0

(cont.)

	COUNTY	NO. RECEIVED
29	Madison	29. 1
30.	Meagher	30. 19
31.	Mineral	31. 0
32.	Missoula	32. 46
33.	Musselshell	33. 0
34.	Park	34. 14
35.	Petroleum	35. 0
36.	Phillips	36. 65
37.	Pondera	37. 0
38.	Powder River	38. 17
39.	Powell	39. 0
40.	Prairie	40. 7
41.	Ravalli	41. 4
42.	Richland	42. 2
43.	Roosevelt	43. 0
44.	Rosebud	44. 0
45.	Sanders	45. 18
46.	Sheridan	46. 4
47.	Silver Bow	47. 0
48.	Stillwater	48. 0
49.	Sweet Grass	49. 1
50.	Teton	50. 0
51.	Toole	51. 0
52.	Treasure	52. 0
53.	Valley	53. 6
54	Wheatland	54. 0
55.	Wibaux	55. 0
56.	Yellowstone	56. 3
TOTAL		600

WATER RESOURCES SURVEY

COUNTY	SURVEYED	PUBLISHED	REPRINT	NUMBER SURVEYED
YELLOWSTONE	1942	1943		1
CARBON	1943	1946		2
STILLWATER	1945	1946		3
BIG HORN	1946	1947		4
CUSTER	1947	1948		5
ROSEBUD	1947	1948		6
GOLDEN VALLEY	1948	1949		7
MUSSELSHELL	1948	1949		8
WHEATLAND	1948	1949		9
MEAGHER	1949	1950		10
SWEET GRASS	1950	1950		11
PARK	1950	1951		12
TREASURE	1950	1951		13
GALLATIN	1952	1953	1961	14
DEER LODGE	1954	1955		15
SILVER BOW	1954	1955		16
BROADWATER	1955	1956		17
JEFFERSON	1955	1956		18
LEWIS AND CLARK	1956	1957	1965	19
RAVALLI	1957	1958	1965	20
GRANITE	1958	1959		21
POWELL	1958	1959		22
CARTER, FALLON, WIBAUX	1959	1960		25
MADISON	1959	1960	1965	26
MISSOULA	1959	1960		27

COUNTY	SURVEYED	PUBLISHED	REPRINT	NO. SURVEYED
CASC[illegible]E	1960	1961		28
POWDER RIVER	1960	1961		29
TETON	1961	1962		30
JUDITH BASIN	1962	1963		31
LAKE	1962	1963		32
CHOUTEAU	1963	1964		33
PONDERA	1963	1964		34
FLATHEAD LINCOLN	1964	1965		36
CARBON (RESURVEYED)	1965	1966		36
BLAINE	1966	1967		37
HILL	1966	1967		38
PHILLIPS	1967	1968		39
VALLEY	1967	1968		40
GLACIER	1968	1969		41
LIBERTY TOOLE	1968	1969		43
MINERAL SANDERS	1968	1970		45
DAWSON	1969			46
PRAIRIE	1969			47
RICHLAND	1969			48
FERGUS	1969			
PETROLEUM *	1970			50
DANIELS SHERIDAN	1970			53
ROOSEVELT *				
McCONE GARFIELD *	1970			55
BEAVERHEAD *	1971			

* To be surveyed

To be published

Charles Bowman -
SB. 124 -

Ex. 4
2-18-71

REFERENCE: Senate Bill No. 124

Section 3. Section 89-849

This section is illegal as written. The Montana Water Resource Board is involved in all adjudication by the mere fact that it represents the people of Montana, sub modo. The Water Resources Director is authorized to appropriate water for the purpose of storage and use in connection with their projects.

Section 2. Section 89-848, gives authority to the Montana water resources board to bring action to adjudicate water. These facts make the Montana Water Resources Board and director a litigate or defendant on practically all Montana streams. The director or his employees could not serve as an unbaised referee in water disputes.

The records and surveys of the Montana Water Resource Board can be used as evidence or the employees may testify without the implication as now stated. The basic concepts of this bill are good but are not acceptable to the people in its present form. The following amendments are necessary and recomended:

(1) Page 4, line # 2, delete "the director of the state water resources board maybe appointed". The American Arbitraters Association could be inserted.

(2) Page 4, line 19, delete "Montana water resources board"and insert "referee".

(3) Page 4, line 24, delete "board" insert "referee".

(4) Page 4, line 27 and 28, delete "state water resources board" and insert "referee".

(5) Page 5, line 11 and 12, delete "state water resources board" and insert "referee".

6) Page 5, line 20, delete line 20 and replace or insert "all parties involved".

This is the backside of Ex 4 2/18/71

Abandonment as stated is hard to prove, it is impossible. Rewrite use Wyoming 5 year limitation for statutory forfeiture, with statutes to cover the procedure. Also it must not be retroactive. Begin with the date of passage.

APPROVED BY COMMITTEE ON
IRRIGATION AND WATER

Feb. 2, 1971

SENATE BILL NO. 128

INTRODUCED BY Mc Dowell Bugg

89-2911, 89-2913

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR THE FILING OF CERTAIN FORMS WITH THE MONTANA WATER RESOURCES BOARD RELATIVE TO GROUND WATER APPROPRIATION; AMENDING SECTIONS 89-2911 AND 89-2913, R.C.M., 1947."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. Section 89-2911, R.C.M., 1947, is amended to read as follows:

"Section 89-2911, DEFINITIONS. As used in this act or regulations issued hereunder:

(a) "Ground water" means any fresh water under the surface of the land including the water under the bed of any stream, lake reservoir, or other body of surface water. Fresh water shall be deemed to be water fit for domestic, livestock or agricultural use. The administrator, after notice and hearing, is authorized to fix definite standards for determining fresh water in any controlled ground water or subarea of the state.

(b) "Aquifer" means any underground geological structure or formation which is capable of yielding water or is capable of recharge.

(c) "Well" means any artificial opening or excavation in the ground, however made, by which ground water can be obtained or through which it flows under natural pressures

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or is artificially withdrawn.

(d) "Beneficial use" means any economically or socially justifiable withdrawal or utilization of water.

(e) "Person" means any natural person, association, partnership, corporation, municipality, irrigation district, the state of Montana or any political subdivision or agency thereof, and the United States or agency thereof.

(f) "Administrator" means the Montana Water Resources Board.

(g) "Ground water area" means an area which, as nearly as known facts permit, may be designated so as to enclose a single and distinct body of ground water, which shall be described horizontally by surface description in all cases and which may be limited vertically by describing known geological formations should conditions dictate this to be desirable. For purposes of administration, large ground water areas may be divided into convenient administrative units "known as subareas."

(h) "Notice of Appropriation" means an optional form on which the appropriator notifies the administrator and files for record the intention to appropriate ground water. This form filed alone does not give the appropriator the right to use ground water. It must be followed by a notice of completion to establish a right.

(i) "Notice of Completion" means a form on which the appropriator notifies the administrator and files for record the completion of a well (Notice of Completion of Ground Water Appropriation by Means of Well) or the completion of a development to withdraw ground water without a well as by subirrigation and other natural processes (Notice of Completion

of Ground Water Appropriation Without a Well).

(j) "Declaration of Vested Ground Water Rights" means a form which was provided, for a period of four (4) years after January 1, 1962, for filing vested ground water rights. This form expired on January 1, 1966."

Section 2. Section 89-2913, R.C.M., 1947, is amended to read as follows:

"Section 89-2913. FILING -- NOTICE OF APPROPRIATION -- NOTICE OF COMPLETION.

(a) The administrator shall prepare and publish forms for the filing by appropriators with the county clerks. They shall be known as a "notice of appropriation" and a "notice of completion," respectively. The notice of appropriation shall require, and provide space for, answers to such questions as: (1) the name and address of the appropriator; (2) the beneficial use for which the appropriation is made, including a description of the lands to be benefited if for irrigation; (3) the rate of use in gallons per minute of ground water claimed; (4) the annual period (inclusive dates) of intended use; (5) the probable or intended date of first beneficial use; (6) the probable or intended date of commencement and completion of the well or wells; (7) the location, type, size and depth of the well or wells contemplated; (8) the probable or estimated depth of the water table or artesian aquifer; (9) the name, address, and license number (if any) of the driller engaged; and (10) such other similar information as may be useful in carrying out the policy of this act.

The notice of completion shall require answers to the same sort of questions as required for the notice of

appropriation, except that for the most part it shall inquire as to accomplished facts concerning the well or means of withdrawal, including information as to the static level of water in the casing or the shut-in pressure if the well flows naturally; the capacity of the well in gallons per minute by pumping or by natural flow; the approximate drawdown or pumping level of the well; the approximate surface elevation at the well head; the casing record of the well; the drilling log showing the character and thickness of all formations penetrated; the depth to which the well is drilled; and similar information.

For the benefit of persons obtaining (or desiring to obtain) ground water without a well (as by subirrigation and other natural processes) a specially prepared "notice of completion" shall be provided, enabling such persons to describe the means of using ground water and to estimate the amount of water so used, and requiring such other similar information as shall be pertinent to this particular class of user. The administrator shall distribute said forms to the county clerks.

(b) On and after January 1, 1962, any person desiring to appropriate ground water may complete a notice of appropriation and file it with the county clerk of the county in which the appropriation is located.

(c) Upon the filing of a notice of appropriation, the county clerk shall transmit a copy thereof to the administrator, and to the Montana bureau of mines and geology, retaining the original on file locally.

(d) After filing a notice of appropriation, in order to acquire a right based thereon, the person must, within ninety (90) days, commence actual excavation and diligently prosecute

construction of a well and, upon its completion, file a notice of completion with the county clerk of the county in which the appropriation is located. The county clerk shall handle and transmit such filed notices as in the case of a filed notice of appropriation.

(e) A failure to file a notice of appropriation deprives the appropriator of his right to relate his date of appropriation back, and results in the dating of his appropriation as of when he files a notice of completion. Until a notice of completion is filed with respect to any use of ground water instituted after January 1, 1962, no right to that use of water shall be recognized. However, in the case of uses instituted prior to January 1, 1962 and diligently prosecuted to completion on or after that date, the date of appropriation shall relate back to the date of commencement of construction, upon the filing of a notice of completion.

(f) Persons required to file well logs and other information under the laws governing the conservation of oil and gas and who do so in compliance therewith, shall be deemed to have complied with all of the filing requirements of this act insofar as it applies to such particular oil and gas wells, salt water disposal wells, and injection wells. The date of appropriation in such cases shall be the date that written notice of intention to drill is given to the oil and gas conservation commission of the state of Montana.

(g) It shall be the responsibility of the driller of each well to fill out the notice of completion for the appropriator, and the latter shall be responsible for its filing.

~~(h) Persons who have put ground water to a beneficial use, including subirrigation or other natural process, prior~~

~~to January 1, 1962, shall, within four (4) years after January 1, 1962, file a declaration in the office of the county clerk of the county in which the claimed right is situated. The declaration shall be made on a form known as a "declaration of vested ground water rights" and shall contain the following information: (1) the name and address of the claimant; (2) the beneficial use on which the claim is based; (3) the date or approximate date of the earliest beneficial use, and how continuous the use has been; (4) the amount of ground water claimed; (5) if the beneficial use has been for irrigation, the acreage and description of the lands to which such water has been applied and the name of the owner thereof; (6) the means of withdrawing such water from the ground and the location of each well or other means of withdrawal; (7) the date of commencement and completion of the construction of the well, wells or other works for withdrawal of ground water; (8) the depth of water table; (9) so far as it may be available, the type, size and depth of each well or the general specifications of any other works for the withdrawal of ground water; (10) the estimated amount of ground water withdrawn each year; (11) the log of the formations encountered in the drilling of each well; and (12) such other information of a similar nature as may be useful in carrying out the policy of this act.~~

(h) Persons who had put ground water to a beneficial use, including subirrigation or other natural process, prior to January 1, 1962 had a four (4) year period after January 1, 1962 to file a "declaration of vested ground water rights" in the office of the county clerk of the county in which the claimed right was situated. The right to file a "declaration

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of vested ground water rights" expired on January 1, 1966; therefore, any person desiring to file on ground water put to beneficial use prior to January 1, 1962, but not filed on by December 31, 1965 may file a "notice of completion." The appropriators right will commence on the date the notice is filed, except as hereinafter provided.

The county clerk shall transmit copies to the office of the administrator and the bureau of mines and geology. The administrator shall attend to filing copies in any other counties affected by the appropriation.

~~The declaration of vested ground water rights herein provided for shall be taken and received in all courts of this state as prima facie evidence of the statements therein contained.~~

The "declaration of vested ground water rights" as provided for, to be filed on from January 1, 1962 to January 1, 1966 shall be taken and received in all courts of this state as prima facie evidence of the statements therein contained.

Failure to comply with this requirement shall in no wise work a forfeiture of such rights, or prevent any such claimant from establishing such rights in the courts, but he must maintain the burden of proving such unrecorded rights. Provided, however, that persons who have filed the water well log form, provided for in Sections 1 and 2 of Chapter 58, Session Laws of Montana, 1957, shall be deemed to have complied with the requirements of this section. These latter forms may be returned to the county clerks by the administrator for the purpose of correction or for the entry of material facts necessary to fully complete the filing.

Section 3. Sections 89-2911 and 89-2913, R.C.M., 1947 are amended.

February 23, 1971

The Agriculture and Irrigation Committee met at 8:00 a.m. with a quorum present and Chairman Hemstad presiding. The meeting was held in Room 431.

Sen. Bennett, representing Dist. 30, stated he was appearing for Sen. Graham on S.B. 126 as Sen. Graham was unable to appear. He stated the bill if enacted would control the use of pesticides and the greatest argument had been as to who would enforce the act. The bill had been rewritten and presently it would designate the department of agriculture to enforce it. He stated the department of health and the department of fish and game would cooperate and have the power of veto if the pesticide is one they didn't approve. He said it would be financed through the registration of distributors of pesticides for a $20 fee and licensing of applicators for $20 fee. He said there is a provision for education of the dealer so that he could inform his customers how to use the pesticide. The bill would require the proper labeling of the pesticides. He said there was provision of an emergency power and anyone damaged by the pesticides can file suit in the courts. Licensing or registration of the applicants and the applicators would be through the department of agriculture, he said.

Mr. Lackman, commissioner of state department of agriculture, appeared on S.B. 126 in support of the bill. He said that he believed agriculture people could live with it and if the bill needed to be amended further, it could be amended in the next two years. He urged the committee concur with the Senate and adopt the bill.

Chairman Hemstad stated the opponents and proponents would both have 20 minutes and the proponents would have five minutes for rebuttal.

Mr. Lackman said he would endorse what Sen. Bennett had said. He said he thought the bill had been improved a great deal since first introduced. He said for any law to be effective, there must be one department to enforce the law. He said the legislative council, the departments of the board of health, agriculture and fish and game had been working for many months on the bill. He proposed some amendments to the bill and presented them to the committee in detail. These amendments are attached as exhibit 1 and become a part of the record. He said Montana had come to the point where the application of pesticides must be controlled and asked the committee to give favorable consideration to passage of the legislation because if Montana did not adopt legislation, the federal government would do so.

Mr. Burton C. Ginther, chemist for the department of agriculture, presented additional proposed amendments and explained the reason for them in detail. His proposed amendments are attached as exhibit 2 and become a part of the minutes. He stated amendments in section 5 would eliminate the veto power of the various agencies to the extent that it would still allow for the three departments a means of disolving a dispute through the advisory committee as already outlined in the bill. He said this strengthened the advisory committee and also allowed it to hold public hearings to gather information. He said amendments would allow distribution of the pesticides to be covered by regulations instead of by law as they had found out from experiences of other states that this would be the best way to handle the distribution. Placing certain pesticides and devices of application in a restricted category and would still be controlle

Mr. Hensley stated that the application by aircraft uses one percent of the pesticides and agriculture uses 91%. He stated the expense of this legislation would be upon the agriculture people. He said nationally the aircraft association for agriculture were trying to devise neutralizers for every contamination there is. He said disposing of containers for pesticides is very difficult to do and they were hoping to find a decontaminator for every contamination there is.

Mr. Osburn stated his industry would require licensing and yet had had no voice in the decisions concerning the bill. He said he would like to talk to someone that knew something about the bill and thought it was a reasonable request. Rep. Smith pointed out that a representative from agriculture had been included.

There being no further questions of the witnesses, they were excused.

Rep. Smith explained that some of those interested had spent 4 hours going over S.B. 126 the night before, proposed and discussed the amendments, and moved that as amended with the proposed amendments, S.B. 126 be concurred in.

Rep. Knudsen seconded the motion. Rep. Ellerd asked if the dairymen favored this legislation and Rep. Kolstad stated they seemed to be in agreement as Sen. Mitchell was a dairyman.

Chairman Hemstad said there was a fiscal report on the bill and passed it around for the members to read.

Rep. Kolstad moved that the fees go back to $20, seconded by Rep. Fleming and the motion carried.

Rep. Staigmiller moved that the word "rent" be deleted from line 19 on page 3, seconded by Rep. Kolstad and the motion carried.

Rep. Giesick moved that "and wildlife" be deleted from line 24 on page 34, seconded by Rep. Burnett, but the motion failed.

Rep. Knudsen presented proposed amendments by the pharmacists which appears as exhibit 7 and become a part of the record. Rep. Fleming seconded the motion but the motion failed.

Rep. Smith's motion that as amended, S.B. 126 do pass. The amendments accepted were those presented by Mr. Lackman and Mr. Ginther and appear as exhibits 1 and 2 and the amendments voted on by the committee members. The motion carried with 2 opposing votes.

Rep. Giesick moved that S.B. 295 be concurred in, seconded by Rep. Kolstad and the motion carried.

Chairman Hemstad stated that there had been several requests to hold the committee report on S.B. 124. Rep. Giesick said to get the bill before the committee, he would move to reconsider S.B. 124, seconded by Rep. Burnett. Rep. Snortland spoke against reconsidering the bill and pointed out that the bill would have to be practically rewritten and the motion failed. The meeting was adjourned at 9:45 a.m.

Nels Hemstad, Chairman

APPROVED BY COMMITTEE
OF THE WHOLE
Feb. 4, 1971

SENATE BILL NO. 128

INTRODUCED BY McGowan, Rugg

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR THE FILING OF CERTAIN FORMS WITH THE MONTANA WATER RESOURCES BOARD RELATIVE TO GROUND WATER APPROPRIATION; AMENDING SECTIONS 89-2911 AND 89-2913, R.C.M., 1947."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. Section 89-2911, R.C.M., 1947, is amended to read as follows:

"Section 89-2911. Definitions. As used in this act or regulations issued hereunder:

(a) "Ground water" means any fresh water under the surface of the land including the water under the bed of any stream, lake, reservoir, or other body of surface water. Fresh water shall be deemed to be water fit for domestic, livestock or agricultural use. The administrator, after notice and hearing, is authorized to fix definite standards for determining fresh water in any controlled ground water or subarea of the state.

(b) "Aquifer" means any underground geological structure or formation which is capable of yielding water or is capable of recharge.

(c) "Well" means any artificial opening or excavation in the ground, however made, by which ground water can be obtained or through which it flows under natural pressures or is artificially withdrawn.

(d) "Beneficial use" means any economically or

socially justifiable withdrawal or utilization of water.

(e) "Person" means any natural person, association, partnership, corporation, municipality, irrigation district, the state of Montana or any political subdivision or agency thereof, and the United States or agency thereof.

(f) "Administrator" means the ~~state water conservation board~~ Montana water resources board.

(g) "Ground water area" means an area which, as nearly as known facts permit, may be designated so as to enclose a single and distinct body of ground water, which shall be described horizontally by surface description in all cases and which may be limited vertically by describing known geological formations should conditions dictate this to be desirable. For purposes of administration, large ground water areas may be divided into convenient administrative units "known as subareas."

(h) "Notice of appropriation" means an optional form on which the appropriator notifies the administrator and files for record the intention to appropriate ground water. This form filed alone does not give the appropriator the right to use ground water. It must be followed by a notice of completion to establish a right.

(i) "Notice of completion" means a form on which the appropriator notifies the administrator and files for record the completion of a well (notice of completion of ground water appropriation by means of well) or the completion of a development to withdraw ground water without a well as by subirrigation and other natural processes (notice of completion of ground water appropriation without a well).

(j) "Declaration of vested ground water rights" means a form which was provided, for a period of four (4) years after January 1, 1962, for filing vested ground water rights. This form expired on January 1, 1966."

Section 2. Section 89-2913, R.C.M., 1947, is amended to read as follows:

"Section 89-2913. Filing--notice of appropriation--notice of completion. (a) The administrator shall prepare and publish forms for the filing by appropriators with the county clerks. They shall be known as a "notice of appropriation" and a "notice of completion," respectively. The notice of appropriation shall require, and provide space for, answers to such questions as: (1) the name and address of the appropriator; (2) the beneficial use for which the appropriation is made, including a description of the lands to be benefited if for irrigation; (3) the rate of use in gallons per minute of ground water claimed; (4) the annual period (inclusive dates) of intended use; (5) the probable or intended date of first beneficial use; (6) the probable or intended date of commencement and completion of the well or wells; (7) the location, type, size and depth of the well or wells contemplated; (8) the probable or estimated depth of the water table or artesian aquifer; (9) the name, address and license number (if any) of the driller engaged; and (10) such other similar information as may be useful in carrying out the policy of this act.

The notice of completion shall require answers to the same sort of questions as required for the notice of appropriation, except that for the most part it shall

inquire as to accomplished facts concerning the well or means of withdrawal, including information as to the static level of water in the casing or the shut-in pressure if the well flows naturally; the capacity of the well in gallons per minute by pumping or by natural flow; the approximate draw down or pumping level of the well; the approximate surface elevation at the well head; the casing record of the well; the drilling log showing the character and thickness of all formations penetrated; the depth to which the well is drilled; and similar information.

For the benefit of persons obtaining (or desiring to obtain) ground water without a well (as by subirrigation and other natural processes) a specially prepared "notice of completion" shall be provided, enabling such persons to describe the means of using ground water and to estimate the amount of water so used, and requiring such other similar information as shall be pertinent to this particular class of user. The administrator shall distribute said forms to the county clerks.

(b) On and after January 1, 1962, any person desiring to appropriate ground water may complete a notice of appropriation and file it with the county clerk of the county in which the appropriation is located.

(c) Upon the filing of a notice of appropriation, the county clerk shall transmit a copy thereof to the administrator, and to the Montana bureau of mines and geology, retaining the original on file locally.

(d) After filing a notice of appropriation, in order to acquire a right based thereon, the person must, within ninety (90) days, commence actual excavation and diligently

prosecute construction of a well and, upon its completion, file a notice of completion with the county clerk of the county in which the appropriation is located. The county clerk shall handle and transmit such filed notices as in the case of a filed notice of appropriation.

(e) A failure to file a notice of appropriation deprives the appropriator of his right to relate his date of appropriation back, and results in the dating of his appropriation as of when he files a notice of completion. Until a notice of completion is filed with respect to any use of ground water instituted after January 1, 1962, no right to that use of water shall be recognized. However, in the case of uses instituted prior to January 1, 1962 and diligently prosecuted to completion on or after that date, the date of appropriation shall relate back to the date of commencement of construction, upon the filing of a notice of completion.

(f) Persons required to file well logs and other information under the laws governing the conservation of oil and gas and who do so in compliance therewith, shall be deemed to have complied with all of the filing requirements of this act insofar as it applies to such particular oil and gas wells, salt water disposal wells, and injection wells. The date of appropriation in such cases shall be the date that written notice of intention to drill is given to the oil and gas conservation commission of the state of Montana.

(g) It shall be the responsibility of the driller of each well to fill out the notice of completion for the appropriator, and the latter shall be responsible for its

filing.

~~(h)--Persons-who-have-put-ground-water-to-a-beneficial use,-including-subirrigation-or-other-natural-process, prior-to-January-1,-1962,-shall,-within-four-(4)-years after-January-1,-1962,-file-a-declaration-in-the-office of-the-county-clerk-of-the-county-in-which-the-claimed right-is-situated.--The-declaration-shall-be-made-on-a form-known-as-a-"declaration-of-vested-ground-water rights"-and-shall-contain-the-following-information:--(1) the-name-and-address-of-the-claimant;-(2)-the-beneficial use-on-which-the-claim-is-based;-(3)-the-date-or-approximate-date-of-the-earliest-beneficial-use,-and-how-continuous-the-use-has-been;-(4)-the-amount-of-ground-water claimed;-(5)-if-the-beneficial-use-has-been-for-irrigation, the-acreage-and-description-of-the-lands-to-which-such water-has-been-applied-and-the-name-of-the-owner-thereof; (6)-the-means-of-withdrawing-such-water-from-the-ground and-the-location-of-each-well-or-other-means-of-withdrawal;-(7)-the-date-of-commencement-and-completion-of-the construction-of-the-well,-wells-or-other-works-for-withdrawal-of-ground-water;-(8)-the-depth-of-water-table;-(9) so-far-as-it-may-be-available,-the-type,-size-and-depth of-each-well-or-the-general-specifications-of-any-other works-for-the-withdrawal-of-ground-water;-(10)-the-estimated-amount-of-ground-water-withdrawn-each-year;-(11) the-log-of-the-formations-encountered-in-the-drilling-of each-well;-and-(12)-such-other-information-of-a-similar nature-as-may-be-useful-in-carrying-out-the-policy-of this-act.**

(h) Persons who had put ground water to a beneficial

use, including subirrigation or other natural process, prior to January 1, 1962 had a four (4) year period after January 1, 1962 to file a "declaration of vested ground water rights" in the office of the county clerk of the county in which the claimed right was situated. The right to file a "declaration of vested ground water rights" expired on January 1, 1966; therefore, any person desiring to file on ground water put to beneficial use prior to January 1, 1962, but not filed on by December 31, 1965 may file a "notice of completion." The appropriators right will commence on the date the notice is filed, except as hereinafter provided.

The county clerk shall transmit copies to the office of the administrator and the bureau of mines and geology. The administrator shall attend to filing copies in any other counties affected by the appropriation.

~~The declaration of vested ground water rights herein provided for shall be taken and received in all courts of this state as prima facie evidence of the statements therein contained.~~

The "declaration of vested ground water rights" as provided for, to be filed on from January 1, 1962 to January 1, 1966 shall be taken and received in all courts of this state as prima facie evidence of the statements therein contained.

Failure to comply with this requirement shall in no wise work a forfeiture of such rights, or prevent any such claimant from establishing such rights in the courts, but be must maintain the burden of proving such unrecorded rights. Provided, however, that persons who have filed

the water well log form, provided for in sections 1 and 2 of chapter 58, session laws of Montana, 1957, shall be deemed to have complied with the requirements of this section. These latter forms may be returned to the county clerks by the administrator for the purpose of correction or for the entry of material facts necessary to fully complete the filing.

Section 3. Sections 89-2911 and 89-2913, R.C.M., 1947, are amended.

2-19-1971

HOUSE COMMITTEE OF THE WHOLE AMENDMENT TO SENATE BILL NO. 128

Amend by striking Section 3 in its entirety.

Section 4. The provisions of this act shall be severable; and if any of its sections, provisions, exceptions, sentences, clauses, phrases or parts be held invalid, the remainder of this act shall continue in full force and effect. Severability clause.

Approved March 15, 1971.

CHAPTER NO. 307.

An Act to Provide for the Filing of Certain Forms with the Montana Water Resources Board Relative to Ground Water Appropriation; Amending Sections 89-2911 and 89-2913, R.C.M., 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 89-2911, R.C.M., 1947, is amended to read as follows: Amending clause.

"Section 89-2911. **Definitions.** As used in this act or regulations issued hereunder: Definitions.

(a) "Ground water" means any fresh water under the surface of the land including the water under the bed of any stream, lake, reservoir, or other body of surface water. Fresh water shall be deemed to be water fit for domestic, livestock or agricultural use. The administrator, after notice and hearing, is authorized to fix definite standards for determining fresh water in any controlled ground water or subarea of the state. "Ground water."

(b) "Aquifer" means any underground geological structure or formation which is capable of yielding water or is capable of recharge. "Aquifer."

(c) "Well" means any artificial opening or excavation in the ground, however made, by which ground water can be obtained or through which it flows under natural pressures or is artificially withdrawn. "Well."

(d) "Beneficial use" means any economically or socially justifiable withdrawal or utilization of water. "Beneficial use."

(e) "Person" means any natural person, association, partnership, corporation, municipality, irrigation district, the state of Montana or any political subdivision or agency thereof, and the United States or agency thereof. "Person."

"Administrator." (f) "Administrator" means the *Montana water resources board.*

"Ground water area." (g) "Ground water area" means an area which, as nearly as known facts permit, may be designated so as to enclose a single and distinct body of ground water, which shall be described horizontally by surface description in all cases and which may be limited vertically by describing known geological formations should conditions dictate this to be desirable. For purposes of administration, large ground water areas may be divided into convenient administrative units "known as subareas."

"Notice of appropriation." *(h) "Notice of appropriation" means an optional form on which the appropriator notifies the administrator and files for record the intention to appropriate ground water. This form filed alone does not give the appropriator the right to use ground water. It must be followed by a notice of completion to establish a right.*

"Notice of completion." *(i) "Notice of completion" means a form on which the appropriator notifies the administrator and files for record the completion of a well (notice of completion of ground water appropriation by means of well) or the completion of a development to withdraw ground water without a well as by subirrigation and other natural processes (notice of completion of ground water appropriation without a well).*

"Declaration of vested ground water rights." *(j) "Declaration of vested ground water rights" means a form which was provided, for a period of four (4) years after January 1, 1962, for filing vested ground water rights. This form expired on January 1, 1966."*

Amending clause. Section 2. Section 89-2913, R.C.M., 1947, is amended to read as follows:

Forms for appropriations. "Section 89-2913. **Filing—notice of appropriation—notice of completion.** (a) The administrator shall prepare and publish forms for the filing by appropriators with the county clerks. They shall be known as a "notice of appropriation" and a "notice of completion," respectively.

Requirements—notice of appropriation. The notice of appropriation shall require, and provide space for, answers to such questions as: (1) the name and address of the appropriator; (2) the beneficial use for which the appropriation is made, including a description of the lands to be benefited if for irrigation; (3) the rate of use in gallons per minute of ground water claimed; (4) the annual period (inclusive dates) of in-

tended use; (5) the probable or intended date of first beneficial use; (6) the probable or intended date of commencement and completion of the well or wells; (7) the location, type, size and depth of the well or wells contemplated; (8) the probable or estimated depth of the water table or artesian aquifer; (9) the name, address and license number (if any) of the driller engaged; and (10) such other similar information as may be useful in carrying out the policy of this act.

Requirements—notice of completion.

The notice of completion shall require answers to the same sort of questions as required for the notice of appropriation, except that for the most part it shall inquire as to accomplished facts concerning the well or means of withdrawal, including information as to the static level of water in the casing or the shut-in pressure if the well flows naturally; the capacity of the well in gallons per minute by pumping or by natural flow; the approximate draw-down or pumping level of the well; the approximate surface elevation at the well head; the casing record of the well; the drilling log showing the character and thickness of all formations penetrated; the depth to which the well is drilled; and similar information.

Use of ground water other than well.

For the benefit of persons obtaining (or desiring to obtain) ground water without a well (as by subirrigation and other natural processes) a specially prepared "notice of completion" shall be provided, enabling such persons to describe the means of using ground water and to estimate the amount of water so used, and requiring such other similar information as shall be pertinent to this particular class of user. The administrator shall distribute said forms to the county clerks.

Notice of appropriation filed with clerk.

(b) On and after January 1, 1962, any person desiring to appropriate ground water may complete a notice of appropriation and file it with the county clerk of the county in which the appropriation is located.

Distribution of copies.

(c) Upon the filing of a notice of appropriation, the county clerk shall transmit a copy thereof to the administrator, and to the Montana bureau of mines and geology, retaining the original on file locally.

Excavation within 90 days.

(d) After filing a notice of appropriation, in order to acquire a right based thereon, the person must, within ninety (90) days, commence actual excavation and diligently prosecute construction of a well and, upon its completion,

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Notice of completion filed with clerk.

file a notice of completion with the county clerk of the county in which the appropriation is located. The county clerk shall handle and transmit such filed notices as in the case of a filed notice of appropriation.

Priorities.

(e) A failure to file a notice of appropriation deprives the appropriator of his right to relate his date of appropriation back, and results in the dating of his appropriation as of when he files a notice of completion. Until a notice of completion is filed with respect to any use of ground water instituted after January 1, 1962, no right to that use of water shall be recognized. However, in the case of uses instituted prior to January 1, 1962 and diligently prosecuted to completion on or after that date, the date of appropriation shall relate back to the date of commencement of construction, upon the filing of a notice of completion.

Oil and gas well logs filed—deemed compliance.

(f) Persons required to file well logs and other information under the laws governing the conservation of oil and gas and who do so in compliance therewith, shall be deemed to have complied with all of the filing requirements of this act insofar as it applies to such particular oil and gas wells, salt water disposal wells, and injection wells. The date of appropriation in such cases shall be the date that written notice of intention to drill is given to the oil and gas conservation commission of the state of Montana.

Duty of driller.

(g) It shall be the responsibility of the driller of each well to fill out the notice of completion for the appropriator, and the latter shall be responsible for its filing.

Beneficial use of ground water prior to January 1, 1962.

(h) Persons who had put ground water to a beneficial use, including subirrigation or other natural process, prior to January 1, 1962 had a four (4) year period after January 1, 1962 to file a "declaration of vested ground water rights" in the office of the county clerk of the county in which the claimed right was situated. The right to file a "declaration of vested ground water rights" expired on January 1, 1966; therefore, any person desiring to file on ground water put to beneficial use prior to January 1, 1962, but not filed on by December 31, 1965 may file a "notice of completion." The appropriators right will commence on the date the notice is filed, except as hereinafter provided.

Filing notice of completion.

Distribution of copies.

The county clerk shall transmit copies to the office of the administrator and the bureau of mines and geology.

The administrator shall attend to filing copies in any other counties affected by the appropriation.

Prima facie evidence.

The "declaration of vested ground water rights" *as provided for, to be filed on from January 1, 1962 to January 1, 1966* shall be taken and received in all courts of this state as prima facie evidence of the statements therein contained.

Noncompliance—burden of proof.

Failure to comply with this requirement shall in no wise work a forfeiture of such rights, or prevent any such claimant from establishing such rights in the courts, but he must maintain the burden of proving such unrecorded rights.

Water well log forms filed.

Provided, however, that persons who have filed the water well log form, provided for in sections 1 and 2 of chapter 58, session laws of Montana, 1957, shall be deemed to have complied with the requirements of this section. These latter forms may be returned to the county clerks by the administrator for the purpose of correction or for the entry of material facts necessary to fully complete the filing."

Approved March 15, 1971.

CHAPTER NO. 308

An Act to Amend Section 92-411, R.C.M., 1947, so as to Define an "Employee" to Include Vocational Rehabilitation and Other on-the-job Trainees, Whether or not under any Appointment or Contract of Hire, and Provide that Members of a Partnership and Owners of Sole Proprietorships May Elect to be Considered an "Employee" for Workmen's Compensation Coverage Purposes; and Providing an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Amending clause.

Section 1. Section 92-411, R.C.M., 1947, is hereby amended to read as follows:

"Employee" and "workman" defined.

"92-411. **Employee and workman defined.** "Employee" and "workman" are used synonymously and mean every person in this state, including a contractor other than an "independent contractor" who is in the service of an employer as defined by the preceding section, under any appointment or contract of hire, expressed or implied, oral or written, including aliens and also including min-